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Note by the President of the Security Council

I have the honour to transmit a letter dated 22 December 2005 from the Chairman of the Informal Working Group of the Security Council on General Issues of Sanctions addressed to the President of the Security Council, transmitting the report of the Security Council Informal Working Group on General Issues of Sanctions on its activities in 2005 (see annex).

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Annex

Letter dated 22 December 2005 from the Chairman of the Informal Working Group of the Security Council on General Issues of Sanctions addressed to the President of the Security Council

I have the honour to transmit herewith the report of the Informal Working Group of the Security Council on General Issues of Sanctions on its activities in 2005 (see enclosure). The report was adopted on 19 December 2005.

I should be grateful if the present letter and its enclosure could be circulated as a document of the Security Council.

(*Signed*) Augustine P. **Mahiga**
Chairman
Security Council Informal Working Group
on General Issues of Sanctions

Enclosure

Report of the Informal Working Group of the Security Council on General Issues of Sanctions

I. Introduction

1. By the note of the President of the Security Council dated 29 January 1999 (S/1999/92), the members of the Security Council adopted a number of practical proposals for improving the work of sanctions committees in accordance with the relevant resolutions and agreed to continue to consider the matter. In a subsequent note by its President, dated 17 April 2000 (S/2000/319), the Council authorized the establishment, on a temporary basis, of an informal working group of the Council to develop general recommendations for improving the effectiveness of sanctions regimes. An overview of the Group's activities during the period 2000-2004 is contained in the attachment to the present report.

II. Activities of the Working Group in 2005

2. In the note by the President of the Security Council dated 5 January 2005 (S/2005/4), the Council members agreed that Augustine Mahiga, Permanent Representative of the United Republic of Tanzania to the United Nations, should serve as Chairman of the Working Group for the period ending 31 December 2005. After a thorough analysis of the situation, with the assistance of the Secretariat, the Chairman engaged in extensive bilateral consultations with members of the Working Group in early 2005. In April 2005, the Working Group tentatively approved its programme of work, with a focus on enhancing its understanding of the major sanctions issues through briefings by experts. The Working Group convened 10 informal meetings in 2005 and was briefed by invited experts on different sanctions-related issues at five of them.

3. At its meeting on 2 June 2005, the Working Group was briefed on the issue of the implementation and enforcement of sanctions by five invited experts: David Cortright, Juan Larrain, Marja Lehto, George Lopez and Anthonius de Vries. The Chairman emphasized that the issue of the implementation and enforcement of sanctions was essential to the success of any sanctions regime. Dr. Cortright and Professor Lopez gave a joint presentation on the history and current trends of sanctions policy. Professor Lopez referred to the effectiveness of sanctions and elaborated on the conditions under which sanctions were likely to succeed or fail. Ms. Lehto shared her experience on sanctions implementation in Finland and observed that in the light of the increased sophistication and complexity of sanctions regimes, the work of sanctions committees was not sufficiently transparent. She also noted that monitoring mechanisms had greatly improved sanctions implementation through their comprehensive reports. Ambassador Larrain shared his experience as the former Chairman of the Monitoring Mechanism on Sanctions against UNITA and emphasized the importance of supporting allegations of sanctions violations with solid evidence. Based on his experience as the sanctions coordinator of the European Commission, Mr. de Vries noted that the success or failure of a particular regime could ultimately be attributed to the quality of its planning.

4. At its meeting on 22 July 2005, the Working Group was briefed on the issue of monitoring mechanisms by five monitoring experts: Abdoulaye Cissoko, Jean-Luc Gallet, Wilson Kalumba, Alex Vines and Jean-Pierre Witty. Mr. Cissoko and Jean-Luc Gallet shared their experience from the Group of Experts on the Democratic Republic of the Congo, in particular with regard to the implementation of the arms embargo. Mr. Kalumba, a financial expert on the Monitoring Group on Al-Qaida and the Taliban, highlighted problems with implementing financial sanctions. Mr. Vines focused on the general conditions under which monitoring mechanisms operate and called for increased cooperation among them. He also suggested that sanctions committees, rather than monitoring mechanisms, be entrusted with the task of designating individuals and entities subject to targeted sanctions.

5. At its meeting on 27 September 2005, the Working Group was briefed on the issue of the proposals of the Governments of Switzerland, Germany and Sweden (Interlaken, Bonn-Berlin and Stockholm Processes), with a focus on targeted financial sanctions, by five experts: Thomas Biersteker, Elizabeth Joyce, Michael Brzoska, Peter Wallensteen and Peter Maurer. All panellists addressed the results achieved by the three Government Processes and subsequent follow-up action. They also noted that the new challenges faced by the sanctions committees needed to be addressed either through a new sanctions process or by other means.

6. At its meeting on 11 November 2005, the Working Group was briefed on the issue of the humanitarian impact of sanctions by Manuel Bessler, Chief of the humanitarian agenda unit at the Office for the Coordination of Humanitarian Affairs, who had contributed to several humanitarian assessments of sanctions regimes and assisted in completing a handbook on methodology to assess the humanitarian implications of sanctions. Mr. Bessler noted that although the trend had shifted from comprehensive to targeted sanctions, methodologies for assessing the humanitarian implications of certain sanctions remained important.

7. Lastly, at its meeting on 22 November 2005, the Working Group was briefed on the issue of the fight against terrorism through the means of sanctions by four experts: Sue Eckert, Heraldo Muñoz, Nico Schrijver and Michail Vitsentzatos. Ms. Eckert presented a summary of policy development on sanctions and current discussions on future challenges. A part of the presentation was based on her recent research into combating the financing of global terrorism. Professor Schrijver provided an international law perspective on sanctions and commented on two sanctions-related cases that had been before the European Court of Human Rights and the European Court of First Instance. Mr. Vitsentzatos spoke about the usefulness of broadening cooperation between international and regional organizations, referred to the European Union as an implementation partner of the United Nations and explained the practices and challenges of this cooperation. Ambassador Muñoz shared his experiences as the former Chairman of the Security Council Committee established pursuant to resolution 1267 (1999) concerning Al-Qaida and the Taliban and associated entities and individuals and underlined the importance of this Committee in the fight against terrorism.

8. As mentioned above, the Working Group invited panels of four or five sanctions experts, often the most prominent experts regarding the issue under consideration, with a background in academia, government, international and regional organizations and sanctions monitoring bodies. In each case, the briefing was followed by a question-and-answer session. The Working Group showed an

interest in new developments regarding the particular topic under discussion, problems and challenges related thereto, the role played by international organizations and practical suggestions for improvements. The selected issues were carefully examined from several relevant perspectives through an interactive and dynamic dialogue. The expert briefings were very useful in providing the Working Group with professional insights into relevant sanctions issues, which greatly assisted the Group in its deliberations and in arriving at observations and recommendations, in accordance with its mandate.

III. General observations and recommendations

9. There follow some general observations on ways to improve the effectiveness of Security Council sanctions, based on the Working Group's consideration of the above topics.

10. The Working Group's deliberations on general issues of sanctions in 2005 coincided with the work on the 2005 World Summit Outcome, which also touches upon issues related to sanctions. Although no specific effort was made by the Group to consider the improvement of sanctions in connection with that Outcome, references were made by some delegations to certain sanctions-related issues, such as periodical sanctions reviews, a call for the Security Council to improve its monitoring of the implementation and effects of sanctions and the establishment of a mechanism to address special economic problems arising from the application of sanctions.

11. Sanctions remain one of the important tools at the disposal of the Security Council for responding to threats to peace and security, including new and evolving challenges, without recourse to the use of force. This is confirmed by the growing number of sanctions regimes and related monitoring mechanisms. It was also observed that the Council, when imposing targeted sanctions, applies more innovative approaches to improve their design and implementation. Members recognized the need to continue efforts to further refine the design and strengthen the implementation of targeted sanctions.

12. As an example of the evolution of targeted sanctions, lists of individuals and entities drawn up by sanctions committees play an increasingly important role in achieving the objectives of targeted sanctions. As a relatively recent innovation in sanctions policy, such lists frequently pose unprecedented technical and political challenges. The sole purpose of sanctions lists is to accurately target those against whom sanctions measures are being applied in order to achieve the objectives stipulated in relevant Security Council resolutions. A better understanding of sanctions lists, and of their potential and limitations, is required at the level of sanctions committees and States. Given the distinct mandates of sanctions committees with respect to the designation of targeted individuals and entities, it is important that relevant sanctions committees continue to address issues related to listing and delisting, as well as sanctions exemptions, through the adoption of new or revised guidelines.

13. Monitoring of sanctions implementation by sanctions committees and monitoring mechanisms, in accordance with relevant Council resolutions, can increase the effectiveness of sanctions. The responsibility for sanctions implementation, however, first and foremost rests with States. Furthermore, the

Security Council continues to receive detailed information regarding the implementation of sanctions regimes from mechanisms tasked with monitoring compliance by States and investigating alleged sanctions violations. More attention should be paid to implementing the recommendations of these monitoring mechanisms in order to gain the maximum benefit from their efforts. There should be more coordination, interaction and exchange of information among such monitoring mechanisms, including through regularized channels, in order to enhance their working methods and efficiency. The Council should also be able to determine ways of strengthening the performance of sanctions monitoring, including through greater coordination and coherence to improve efficiency and more effective use of resources. Monitoring mechanisms should also be utilized more by sanctions committees for the provision of analytical and technical information that might allow more professional and speedy consideration of specific issues. Prompt action by sanctions committees and increased transparency in their work can have a positive impact on the level of preparedness of States to implement sanctions. A proactive and dynamic chairman of a sanctions committee plays an indispensable role in this regard.

14. Cooperation with relevant international, regional and subregional organizations and specialized agencies should be further enhanced, including strengthening the ability to implement sanctions of those States that face implementation problems for reasons other than a lack of political will. Such assistance would enable the Council to determine the reasons for non-compliance and to take the necessary steps to ameliorate the situation.

15. The Interlaken, Bonn-Berlin and Stockholm Processes have substantively enhanced the understanding of the concept and implementation of sanctions measures. Although most of the recommendations generated in these Processes are of permanent value, the specific nature of issues encountered in some current targeted sanctions regimes and their implementation could require further refinement.

16. Unlike comprehensive sanctions, targeted sanctions tend to have minimal negative effects on civilian populations and third States. Nevertheless, if targeted sanctions are not properly designed and implemented, their legitimacy can be compromised and their usefulness questioned.

17. The Security Council has an array of options at its disposal in responding to threats to international peace and security. Sanctions are one such option. In this regard, the Council may wish to address the issue of how to enhance the preventive nature of sanctions and their utility within other parallel strategies. The Council should continue to apply an integrated approach in response to threats to international peace and security, including those where the Council makes use of sanctions.

18. Members also observed an increasing fatigue among States with regard to reporting and visits by different monitoring mechanisms and other bodies, and noted the need to address that challenge, possibly by adopting a more flexible and direct approach to States.

IV. Conclusions

19. In accordance with its mandate, the Working Group focused on how to improve the effectiveness of sanctions regimes and, in so doing, generated a number of useful and innovative ideas. Although the attempt to catalogue these ideas did not proceed as expeditiously as desired, the exchange of views, on an informal basis, among members of the Council, with the participation of top experts on sanctions and other matters, enhanced the understanding of various aspects of sanctions in general, and of specific sanctions measures in particular. It also highlighted issues related to the institutionalized support of sanctions through sanctions committees, the Secretariat and monitoring mechanisms. The exchange of views also contributed to identifying new issues, challenges and problems in sanctions implementation.

20. The Working Group notes with appreciation the involvement of experts from academia, government, the Secretariat and other areas, who described bold strategies for the accurate and efficient use of sanctions to address the new challenges to international peace and security, in particular terrorism. Although initial discussions in the Working Group indicated the importance of the practice of continuing to deliberate on ways to enhance the effectiveness of United Nations sanctions, the Group did not reach conclusions concerning its future role in conducting or facilitating those deliberations.

21. As long as threats to international peace and security exist sanctions will remain an essential tool of the Security Council, and the ongoing search for their improvement is a worthy undertaking. The question of who should lead this effort, and how, is one that the Council may wish to consider.

Attachment

Activities of the Working Group for the period from 2000 to 2004

1. Under the leadership of the first Chairman, Ambassador Anwarul Chowdhury of Bangladesh, the Working Group commenced discussions in May 2000, and held more than 25 subsequent meetings. At many of these meetings, experts with different areas of expertise were invited to brief the Working Group on relevant issues. On the basis of these briefings, a draft non-paper, entitled "Chairman's proposed outcome", identified ways in which the effectiveness of sanctions might be improved.

2. Under the Working Group's second Chairman, Ambassador Martin Belinga-Eboutou of Cameroon, during the period from 2002 to 2003, the Working Group continued its work under the same mandate. Specific attention was paid to a number of issues, as identified by Ambassador Chowdhury in his report to the Security Council of 16 February 2001, on which consensus had not been reached. Despite the Chairman's efforts, it was not possible to reach an overall agreement on those issues. Ambassador Belinga-Eboutou briefed the Council accordingly on 18 December 2003, and a report of the Working Group to this effect was issued on 22 January 2004 (S/2003/1197, annex).

3. Under the chairmanship of Ambassador Joël W. Adechi of Benin, the Working Group held three informal meetings in 2004. The key issues on which consensus could not be reached were the following: the duration of sanctions, i.e., whether sanctions should be, in principle, time-limited; the related issue of criteria for lifting sanctions; Committee decision-making (whether by consensus or simple majority); and addressing the concerns of third States adversely affected by sanctions. Most delegations favoured continuing the consideration of the Chairman's proposed outcome (Rev.10). At least one delegation was of the view that the draft non-paper was outdated, since, in the wake of the events of 11 September 2001, it failed to address the Security Council's use of sanctions as a key policy tool in international efforts to combat the threat posed by global terrorism, particularly in the area of terrorist financing.

4. After thorough discussion and assessment of the practice of the Security Council in the use of sanctions, the Working Group came to the conclusion that many of the recommendations identified during its previous discussions and highlighted in the Chairman's proposed outcome, coupled with ideas advanced at the Interlaken, Bonn-Berlin and Stockholm Processes, had resulted in tangible and concrete changes during the past several years. Those changes had affected the manner in which the Council designed and imposed sanctions regimes; how States implemented sanctions; and the functioning of the Secretariat (specifically the Security Council Subsidiary Organs Branch). To underscore the importance of such improvements, the Working Group highlighted a number of the changes, in the former Chairman's letter to the President of the Council dated 17 December 2004 (see S/2004/979, annex).

5. It is worthwhile to note that since the establishment of the Working Group, the above-referenced Chairman's proposed outcome had undergone 10 major revisions in an attempt to reach consensus among the members of the Working Group. Disagreements among members concerning a very limited number of key issues

prevented the finalization of the document. The latest draft version of the Chairman's proposed outcome (Rev.10), dated 26 September 2002, containing 65 recommendations, is available at the Group's website (http://www.un.org/Docs/sc/committees/sanctions/index.html).

6. In the note by the President of the Security Council dated 23 December 2004 (S/2004/1014), the Council decided to extend the mandate of the Working Group until 31 December 2005. The Working Group continued to be mandated to develop general recommendations on how to improve the effectiveness of sanctions. Within this framework, the Group was also mandated to address a number of specifically outlined issues and with the consensus of its members, through open and informal dialogue with interested States, as well as international, regional, intergovernmental and other relevant organizations. The Council also noted that the Working Group should benefit from all available sanctions expertise, including by being briefed, on a case-by-case basis, by appropriate experts.